MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
SUBCOMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **VICE CHAIRMAN ROYAL JOHNSON**, on February 3, 2001 at 9:15 A.M., in Room 317-B Capitol.

ROLL CALL

Members Present:
Sen. Royal Johnson, Chairman (R)
Sen. Don Ryan (D)
Sen. Tom Zook (R)

Members Excused: None

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Melissa Rasmussen, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Discussion on SB 243

Discussion:

Todd Everts brought the committee up to speed regarding the **SB024306** amendments, **EXHIBIT(ens28a01)** for SB 243. He stated that even though the committee had passed on those changes, they still had the PPL amendments, **EXHIBIT(ens28a02)** to go through. Specifically subsections five, seven and nine. All of those subsections had not been agreed to by Montana Power and Northwestern.

CHAIRMAN ROYAL JOHNSON, asked **Ken Morrison** from Pacific Power and Light (PPL) to walk the committee through the amendments. **Mr. Morrison** began by addressing subsection 5. He suggested the committee accept the word "will" in place of the word "may". PPL offered a base load for the number of megawatts in the bill. The original bill offered a five-year term for approximately 400 megawatts. Northwestern and Montana Power Company (MPC) felt a

three year term would be more appropriate. PPL wanted to take into account MPC & Northwestern's concerns by providing a five-year term at 300 megawatts as a customers' minimum load, and a three-year term for an additional 100 megawatts. PPL felt this was a good compromise. **Pat Corcoran**, MPC, stated that MPC did not agree with the language put forth by PPL. MPC felt that the new language did not coincide with the original intent of the bill. MPC did not believe that locking companies into a five year contract was good for the consumer. **Mr. Corcoran** further went on to state that this type of language would take away the flexibility necessary to be competitive during the bid process. MPC asserted that it was necessary to look at the long term impact of this language in order to provide for the consumer. **Mr. Corcoran** concluded his comments by pointing out that accepting PPL's proposed amendment would conflict with amendments that had already been accepted by the committee.

Susan Good, Public Service Commission (PSC), agreed with **Mr. Corcoran** that the committee should not accept the language proposed by PPL. **Ms. Good** stressed the importance of maximum flexibility in the coming years, and putting this into statute would eliminate that ability. **Commissioner Gary Feland**, Chairman of the PSC, affirmed what **Ms. Good** said.

Mr. Morrison responded to the concerns brought up by **Mr. Corcoran**. First, there was nothing in the language that stated PPL would automatically obtain the contract. In fact if PPL did not get the contract they would be locked out of it for five years. PPL has found in their research that they can get a better price if the contract is for a longer period of time. In turn, extending the time frame would make it a better situation for all competitors. **Rae Olsen**, PPL added that is why they suggested 300 megawatts instead of 400.

SENATOR DON RYAN commented that **Mr. Corcoran** had stated previously that MPC wanted to work with the PSC in advance so that the time limit for accepting the offer would be something they could both work with. He asked if a full requirements contract would be made available for the five years if someone would want to jump in? He further asked if together the PSC and MPC could set up different ways that customers could do bids? **Mr. Corcoran** said that **SENATOR RYAN** was correct that there would be a variety of bids available. **SENATOR RYAN** further asked if there was anything set up right now that would guarantee the consumer that the PSC would review the proposals so that all of the options are left open? **Dennis Lopach**, Northwest Corporation (NWC),replied that that type of language does not exist. However, they did plan on putting it in.

SENATOR TOM ZOOK moved amendment 5 on (exhibit 1) as written. He commented that the language did not preclude asking for submission of the bid for the full term of the contract.

Motion/Vote: SEN. ZOOK moved that **AMENDMENT 5 ON PPL AMENDMENTS** (exhibit 2) **BE ADOPTED. Motion carried 2-1 with Johnson voting no.**

CHAIRMAN JOHNSON, justified his vote by exclaiming that he agreed with what the PPL people had said about first protecting the customer and then the distributer.

The subcommittee moved onto amendment 7(exhibit 2). **Mr. Morrison** opened the discussion by recapping the previous days discussion about the 06 amendments (exhibit 1). He brought up the idea that the language they adopted yesterday may not be the right way to go. The adopted wording has brought up concerns regarding the openness of the language regarding the procurement of electricity supply to meet hourly load fluctuations for balancing and/or reliability. PPL suggested that when there is no competitive bid process nor review that the definition be limited to procuring electric supply to meet PPL's load fluctuations rather than the language in 06 which is peaking or load following purposes. PPL would argue that this language would create a competitive bid process rather than eliminating it. **Mr. Corcoran** agreed with the first part of the language but disagreed with the portion concerning the load fluctuations. He stated that the language already exists to deal with load fluctuations.

CHAIRMAN JOHNSON asked for clarification from **Mr. Corcoran** if he disagreed with the time issue presented in the language? **Mr. Corcoran** disagreed with the language specifically related to hourly rates. He pointed out there may be circumstances that would be in conflict with that type of restriction. **Commissioner Feland** agreed with MPC.

Motion/Vote: **SEN. JOHNSON** moved that **AMENDMENT 7 ON PPL TO REPLACE 7 ON 06 BE ADOPTED. Motion carried 3-0.**

Mr. Morrison began discussion on amendment 9 regarding energy risk management. **Mr. Morrison** claims that the process presents more risk than the consumers of Montana need to bare; therefore PPL would recommend that there be no cost recovery on energy risk management.

CHAIRMAN JOHNSON called for clarification on item number 9. He stated that the committee had already taken action on this particular issue and wanted to know if members of the committee would like to change their votes? **SENATOR RYAN** asked if **CHAIRMAN**

JOHNSON wanted to remove the energy risk management from the process? **CHAIRMAN JOHNSON** answered yes for the reason given by **Mr. Morrison.**

SENATOR RYAN asked how the PSC felt about that issue? **Commissioner Feland** exclaimed how important it is to allow the cost to be recovered. He pointed out that MPC is not making a dime off of this process and that tying their hands would be more harmful than helpful. He stressed the need for caution when addressing this particular amendment.

CHAIRMAN JOHNSON asked if **Commissioner Feland** had read the rules put forth by MPC and if there was anything in the language regarding energy risk management? **Commissioner Feland** said PSC is still in the process of going through the new set of rules issued last week. **SENATOR RYAN** asked how he felt about the word "must" rather than "may". **Commissioner Feland** charged that if he were the default supplier he would not take a chance on contracting anything lower because he would not be guaranteed his recovery. This word simply allows MPC to recover some of the cost. **SENATOR RYAN** wanted **Commissioner Feland** to answer the question from the perspective of a commissioner not from the standpoint of MPC. The question was redirected to **Commissioner Jay Stovall**. **Commissioner Stovall** replied by asking if this is something you would want to be tied into?

SENATOR ZOOK reported that MPC had no control over being the default supplier and that it was not the committee's right to tell a private company with stockholders what kind of risk they needed to take. Therefore, he did not have a problem with the word "must".

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Mr. Everts highlighted a section for new SB024307 amendments **EXHIBIT(ens28a03)**. The new language is an attempt to clarify the section and make it stronger. **Mr. Morrison** understood the need for a definition in this section and agreed with the definition. However, he urged the committee to consider putting a cap of 14 days into the language. **CHAIRMAN JOHNSON** asked if a supplier would automatically put a limitation on their bid? He suggested that the committee put the word "and" into the language.

CHAIRMAN JOHNSON asked if once the distributer has put in a bid if the contract stays open for a designated period of time? **Mr. Corcoran** replied that it would be more feasible for the bidder to establish the appropriate time frame for the bid. **Mr. Morrison** pointed out that the commissioner needs to approve the bid and he

was concerned that the present language did not allow for the flexibility necessary if someone were to request a shorter time frame. **CHAIRMAN JOHNSON** still did not understand why the time frame was not established in the bidding process. **Mr. Lopach** offered that putting in the 14 days would make sure there was a limited time that a bid could go on. **CHAIRMAN JOHNSON** asked why the committee would want to impose more restrictions? **Mr. Lopach** was trying to find a reasonable solution. **SENATOR ZOOK** affirmed **CHAIRMAN JOHNSON'S** position.

Commissioner Feland questioned the validity of the amendment due to existing standards. **CHAIRMAN JOHNSON** argued that the time frame is necessary because the bid is between the supplier of electricity and the default supplier of distribution. This would work the commission into the process so that they would have a chance to look at the bid.

Motion/Vote: **SEN. JOHNSON** moved the **HIGHLIGHTED LANGUAGE IN THE NEW 07 AMENDMENTS BE ADOPTED. Motion carried 3-0.**

Mr. Everts walked the committee through the remaining amendments in the SB024304 **EXHIBIT(ens28a04)** section. **Mr. Morrison** asked if the committee had already accepted amendment 4? **Mr. Everts** stated that the committee needed to clarify the definition in amendment 4. **Mr. Corcoran** agreed that the language was consistent with other concepts that had already been discussed.

Motion/Vote: **SEN. JOHNSON** moved that **AMENDMENT 4 ON 04 BE ADOPTED. Motion carried 3-0.**

Mr. Corcoran offered that amendment eight was a simple clarification.

Motion/Vote: **SEN. JOHNSON** moved that **AMENDMENT 8 ON 04 BE ADOPTED. Motion carried 3-0.**

Mr. Everts commented that amendment 9 made it clear that there was no specific load necessary to make the language work. **Mr. Corcoran** charged that amendment 9 was not a removal of the 5%. It simply clarifies how they deal with their larger customers. The specific change included in the language is the incentive and exit fee regarding lock-in and lock-out. MPC would be open to changing the language if necessary.

Motion/Vote: **SEN. JOHNSON** moved that **AMENDMENT 9 ON 04 BE ADOPTED. Motion carried 3-0.**

Mr. Everts notified the committee that amendment 15 was a technical amendment. **SENATOR RYAN** asked for a point of clarification regarding amendment 15. He wondered if customers who had purchased contracts that did not expire until 2004 if that person would be allowed to come on as a new customer? **Mr. Evert** said according to the language a small customer would be allowed to come back into the load of the default supplier. **Mr. Corcoran** exclaimed that technically the amendment made reference to a new customer. The answer to **SENATOR RYAN'S** question is answered in another section. **Mr. Lopach** added that he believed the language allowed the customer to come back. **CHAIRMAN JOHNSON** asked if the customer was not a 1A customer if they would be allowed to come back? **Mr. Lopach** said that was correct according to his understanding. He stressed that the intent was to allow the customer to come back. **Mr. Everts** added that the definition said "person" not "entity" in the new customer definition. Changing the definition would indeed offer clarification to the issue.

Motion/Vote: SEN. JOHNSON moved that **AMENDMENT 15 AND 16 BE ADOPTED. Motion carried 3-0.**

{Tape : 2; Side : A; Approx. Time Counter : 1 - 28}

Mr. Corcoran stated that amendment 17 was another method of clarification.

Motion/Vote: SEN. JOHNSON moved that **AMENDMENT 17 ON 04 BE ADOPTED. Motion carried 3-0.**

There was no discussion on amendment 18

Motion/Vote: SEN. JOHNSON moved that **AMENDMENT 18 ON 04 BE ADOPTED. Motion carried 3-0.**

CHAIRMAN JOHNSON introduced amendment 19. He stated that 19 addressed the issue of cost. **Mr. Corcoran** informed the committee that there is currently an education cost and process. The amendment specifically refers to an increased cost. **CHAIRMAN JOHNSON** suggested that they completely take the cost out and let the PSC regulate it. **Mr. Corcoran** maintained that this language existed in the current statute in regards to the current education program. **Commissioner Feland** added that this is something that the PSC would not like to undertake. **Mr. Corcoran** reminded the committee that there is an established process in play today.

Motion/Vote: SEN. JOHNSON moved that **AMENDMENT 19 ON 04 BE ADOPTED. Motion carried 3-0.**

Mr. Corcoran explained that amendment 20is an attempt by MPC to clean up the language as the rights to the actual activity. **CHAIRMAN JOHNSON** asked if there was an emergency situation would the default supplier be the one liable for the charges? **Mr. Corcoran** stated that these could be additional costs by the default supplier. The language specifically address the people on the system. The norm does not require the default supplier to pay for all customers in an emergency situation. In turn, the default supplier is not responsible for the costs, the power supplier is. **CHAIRMAN JOHNSON** asked if by law MPC was required to deliver the emergency power? **Mr. Corcoran** pointed out that a large customer has the choice to opt in or opt out, and that the default supplier is not responsible for that customer. He then addressed the small investor by stating that the contract supplier would still be responsible for that original commitment. **Mr. Corcoran** and **Mr. Lopach** conferred and offered new language for number 20. The new language would make the default supplier look first to the defaulting supplier and then if the cost still remained unrecoverable they would turn to the customer for recovery costs.

CHAIRMAN JOHNSON asked what size load the new language was addressing? **Mr. Lopach** said they were talking about any size. **CHAIRMAN JOHNSON** expressed his displeasure for the new language. **Mr. Lopach** argued that they would then look to the bond.

Mr. Evert asked if MPC would take into consideration the fact that some members of a contract would want to get back in once they had opted out? **Mr. Corcoran** said that they would take care of those customers coming and going. However, it's important to take into account that the amendments the committee had previously adopted do not allow anybody else to go to choice. He reminded the committee that the transition contract that the supplier has to serve it's customers would be the first place where the supplier could get into trouble. This language is a preventative measure.

Holly Franz, PPL, commented that she was confused about the topic of conversation because she felt the language was talking about customers that were not with the default supplier. She asked if **CHAIRMAN JOHNSON'S** concern was a large customer who chose not to go with a default supplier? If the large customer has an emergency can the supplier come back on as long as they don't pass the costs onto the people who have already opted in? She went on further to say she was concerned because that requires a bond and there is no bond in that situation. Therefore the

discussion of a bond is confusing in this situation. **Mr. Corcoran** countered by saying that a large customer has to opt in or opt out, they cannot come back to the default supplier anytime during the five year period. **CHAIRMAN JOHNSON** said his understanding was, for example, a customer who has a contract beyond the five years. If that customer wants to come on based on the knowledge that the contract will be terminated at the end of 2002, once they discuss the terms of that contract with the supplier and then make the deal with MPC why would MPC not ask them for a bond for the period of time for the electricity and time remaining on the contract? **Mr. Corcoran** reiterated that the larger customer has to opt in under the current language before July 1, 2002. In the case of **Ms. Franz** client, if their current contract runs till the end of 2002 they would have to terminate their current contract and make a decision to be served by the default supplier. MPC is asking all large customers to decide if they want to be in our out. **CHAIRMAN JOHNSON** asked if that was a negotiated situation? **Mr. Corcoran** answered yes.

SENATOR RYAN asked if there are customers who have contracts past 2002 but those contracts will be terminated if they choose to get in, what's wrong with having them bond ahead of time and letting us know prior to 2002 that they are going to be in? Their load requirements would end in 2002 and then we could build those into the long term contract. **Mr. Corcoran** provided that that would not be very difficult to do, but it would cause an increase across the board to everyone's portfolio.

SENATOR ZOOK thought the understanding was having a larger amount of power and making it a more attractive rate. He thought that was the reason for the opt in opt out. Since the discussion has revolved around the base load the flexibility provided in the language does not seem necessary.

ADJOURNMENT

Adjournment: 10:35 A.M.

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SEN. ROYAL JOHNSON, Chairman

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MELISSA RASMUSSEN, Secretary

MC/MP